

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWLETH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

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WRIT PETITION NO : 23696 of 1998

Between:

A.Brahma Chari @ A.Paripurna Chari,
S/o.Sattaiah @ Satyanarayana, aged about 27 years,
Helper (dismissed from Service),
R/o.Gattuppal, Nalgonda.
..... PETITIONER

AND

1. Government of Andhra Pradesh, rep. by its

Principal Secretary, Power and Energy

Department, Secretariat, Hyderabad.

2. A.P.S.E.B., rep. by its Chairman-cum-

Managing Director, Vidyut Soudha,

Khairatabad, Hyderabad-82.

3. Superintending Engineer (Operation),

A.P.S.E.B., Nalgonda.

4. Member Secretary, A.P.S.E.B.,

Vidyut Soudha, Khairatabad, Hyderabad-82.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the accompanying Affidavit, the High Court may be pleased to issue an order or orders or directions particularly in the nature of Writ of

Mandamus and Certiorari calling for the records pertaining to Memo No.CE/DC/DM-V/805-P1/92-73, dated 8.6.1998 of the 4th respondent and quash the same as illegal, arbitrary, contrary to law, violative of principles of natural justice and violative of Articles 14, 16 and 21 of Constitution of India and non-application of mind, bias and without jurisdiction to issue orders by taking the powers of the appointing authority and consequently appoint the petitioner into service and also consequently directing the 4th respondent to appoint the petitioner forthwith with all consequential, service and monetary benefits from the date of suspension till the date of reinstatement in the interest of justice.

Counsel for the Petitioner: MR.A.RADHA KRISHNA

Counsel for the Respondents: MR.S.RAVINDRA NATH, STANDING COUNSEL FOR APSEB.

The Court made the following:

ORDER:

This writ petition is filed questioning the Memo No.CE/DC/DM-V/805-P1/92-73, dated 08-06-1998 issued by the fourth respondent dismissing the petitioner from service.

The petitioner initially worked as casual labourer in Andhra Pradesh

State Electricity Board from 1979 to 1989 and consequent upon the decision taken by the Board to fill up the post of Helper from among the casual labour worked prior to 1989, he was appointed as Helper on 24-08-1989. While so, he was suspended from service on the ground of impersonation basing on the report of the Vigilance Department. The petitioner states that his name was being called as "Paripurna Chari, s/o Sathaiah in his area and as per the records his name is Bramhachari, s/o Satyanarayana alias Sathaiah. A charge sheet was issued to the petitioner on 17-11-1992. He submitted a detailed explanation for the same on

06-01-1993. Further, criminal proceedings were also initiated against him by filing a complaint before the II Town Police Station, Nalgonda. It seems that the criminal proceedings ended in acquittal. The departmental enquiry was conducted and in that enquiry, the Sarpanch, Upa-sarpanch and other villagers were examined and all of them stated that the petitioner, A.Brahmachari alias Paripurnachari, s/o Sathaiah alias Satyanarayana is one and the same. In fact, the Inspector of Police took photographs of the petitioner (Brahmachari) to his native place. The Sarpanch, Upa-sarpanch and one Indrakanti Yellaiah identified the photograph as that of Agavarapu Paripurna Chari, s/o Satyanarayana. On the basis of the said evidence, the enquiry officer came to the conclusion that it is common practice in the village that a person will be called by two to three names and that the petitioner was also called as Paripurnachari. Therefore, the charge was not proved.

The disciplinary authority disagreed with the findings of the enquiry officer and issued a show-cause notice to the petitioner. After submission of explanation, he was dismissed from service. After discarding the evidence recorded by the enquiry officer, there was nothing before the authorities except the vigilance report. The enquiry itself was launched on the basis of vigilance report. Again, they went back to the same discarding enquiry report and found that the petitioner had impersonated one A.Brahmachari, s/o Sathaiah.

It is curious to note that except the report of the enquiry officer,

absolutely there was no new evidence before the disciplinary authority to consider and pass orders which are impugned in this writ petition. It is also curious to note that it is not the case of the respondent-Board that Brahmachari, s/o Sathaiah was a different person and he made a complaint before them that the petitioner is not the said Brahmachari, s/o Sathaiah and the petitioner had impersonated him and no effort has been made by the department to find out the said Brahmachari, s/o Sathaiah, who according to the department, was a different person. Therefore, I am of the considered opinion that the impugned proceedings revealed that no enquiry worth the name was conducted and the enquiry conducted in the village with the Sarpanch, Upa-sarpanch and one Yellaiah and also the photographs verified by the police revealed that Brahmachari, s/o Sathaiah was also called as Paripurnachari, s/o Satyanarayana in the village. This evidence was totally ignored and again they want to consider the vigilance report, which was said to have been conducted by the department and it was never put to the petitioner. Therefore, I am of the opinion that no enquiry worth the name was conducted and the impugned order does not stand scrutiny of law and deserves to be quashed and is accordingly quashed.

The learned standing counsel for the respondents contends that against the impugned order, an appeal is available under Regulation 13 of Service Regulations of the A.P.S.E.B. and the petitioner could have availed the same and non-availing of appeal, which is an alternative and efficacious remedy, debars the petitioner from approaching this court under Article 226 of the Constitution of India. I am afraid, I cannot agree with the said contention at this length of time. Moreover, the writ petition has been pending since 1998 and the way in which the petitioner was dealt with also does not inspire confidence of the court to relegate the petitioner to the remedy of appeal. Further, the learned standing counsel for the respondents contends that if this court declares the impugned order as not valid, the matter may be remitted back to the disciplinary authority for conducting a fresh enquiry. I am afraid, I cannot agree with the said

submission for the very same reason the way in which the enquiry officer's report was ignored by the disciplinary authority.

In these circumstances, the impugned order is set aside. The respondents are directed to reinstate the petitioner into service and if really the respondents want to proceed further and conduct an enquiry as available to them under law, they may go ahead after giving an opportunity to the petitioner.

The writ petition is allowed to the extent indicated above. No order as to costs.

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12-10-2004.

Lrkm.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday the twelfth day of October Two thousand and four.

REGISTRAR.

To

1. The Principal Secretary,

Government of Andhra Pradesh,

Power and Energy Department,
Secretariat, Hyderabad.

2. The Chairman-cum-Managing Director,
A.P.S.E.B., Vidyut Soudha,

Khairatabad, Hyderabad-82.

3. The Superintending Engineer (Operation),

A.P.S.E.B., Nalgonda.

4. The Member Secretary, A.P.S.E.B.,
Vidyut Soudha, Khairatabad, Hyderabad-82.

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